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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,135

06/01/2006

Steffen Clarence Pauws

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

VO, CECILE H

ART UNIT

PAPER NUMBER

2169

MAIL DATE

DELIVERY MODE

09/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/596,135	Applicant(s) PAUWS, STEFFEN CLARENCE	
	Examiner CECILE VO	Art Unit 2169	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Tony Mahmoudi/
 Supervisory Patent Examiner, Art Unit 2169

/Cecile Vo/
 Examiner
 Art Unit: 2169

Continuation of 11. does NOT place the application in condition for allowance because:

1. Regarding Claim Rejections - 35 USC 101: Applicants' arguments to the rejections under 35 USC 101 is persuaded. The Examiner hereby withdraws the rejection to claim 11.

2. Regarding Claim Rejection - 35 USC 102 :

In response to Applicants' argument, in page 8 of the Remarks : Tsui fails to teach "independently searching a melody database for a closest match for each sub-string of a plurality of query sub-strings", and fails to teach "determining at least a closest match for the query string based on the search results for the respective sub-strings". The Examiner respectfully disagrees.

In the final rejection of 07/18/2008, page 5, the Examiner submitted that: the step of "independently searching a melody database for a closest match for each sub-string of a plurality of query sub-strings" was disclosed by Tsui in §0042, lines 1-4 (e.g. the melody-to-note conversion subsystem converts the digitized input melody (as a query string) into a sequence of musical notes (as sub-strings) characterized by pitch, beat duration and confidence levels); and the step of "determining at least a closest match for the query string based on the search results for the respective sub-strings" was disclosed by Tsui in §0044-§0045 (e.g. the note matching engine calculates a matching score for each song in the database, §0044, lines 20-21; and the output subsystem sorts the songs or music in the database based on the matching scores. The highest ranked song(s) or piece(es) of music is selected for presentation to the user).

The Applicants also argued that : Tsui does not teach "searching for a match to each note in the query, and then determining whether a song matches the query based on the search results for each individual note", in page 9 of the Remarks. The Examiner respectfully submits that the limitation asserted by the Applicants is not addressed in independent claims. Therefore, the ordinary skill in the art would not be reasonably apprised of the scope of the limitation. The applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicants' argument on dependent claims 2, 6, 7, 8, 13 and 19, in pages 10 and 11 of the Remarks: Tsui also fails to teach "decomposing the query string into sub-strings that correspond to phrases of a melody", as claimed in claims 2 and 13. Tsui also fails to teach "iteratively determining, for each centroid corresponding to a sub-string of the query string". And Tsui also fails to teach "dividing a duration or the audio fragment by an average duration of a phrase". The Examiner respectfully disagrees.

The Examiner respectfully submits that these limitations have been addressed in the final rejection of 07/18/2008, from pages 5-9. Since claims 2, 6, 7, 8, 13 and 19 are dependent claims, it is noted that dependent claim(s) would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.